IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Kishan Lal v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.714/2005
under Article 226 of the Constitution of India.

Date of Order : 2nd September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. H.S.Sidhu, for the petitioner.
Mr. S.N.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

Under an advertisement dated 23.5.1997 the District Education Officer (Boys), Sriganganagar invited applications from eligible desirous candidates for the purpose of recruitment to the post of Physical Training Instructor Gr.III. The petitioner considering himself eligible submitted an application in pursuant thereto.

After holding regular selection proceedings a select list was declared by the District Education

Officer (Boys), Sriganganagar. In the said list name of the petitioner was shown at Sr.No.16 and name of one Shri Satish Chandra son of Brahamdutt was shown at Sr.No.10. The District Education Officer (Secondary) Sriganganagar acting upon the select list referred above vide an order dated 23.3.1998 appointed selected incumbents to the post of Physical Training Instructor Gr.III. By this order appointment was given to 19 persons including 15 persons from amongst 16 persons whose names appeared in select list. Appointment was also accorded to Shri Satish Chandra son of Shri Brahamdutt.

The petitioner made a complaint to the District Education Officer (Secondary) Sriganganagar to the effect that appointment to Shri Satish Chandra was wrongly accorded as he does not possess qualification required and the documents produced by him while seeking employment are forged. No action thereon was taken by the respondents, therefore, a writ petition was preferred by the petitioner before this Court to quash the appointment of Shri Satish Chandra being not eligible to hold the post of Physical Training Instructor Gr.III. The writ petition preferred by the petitioner (SBCWP No.2009/98) was dismissed by this Court by observing a fact that the Education Department was making an inquiry with regard to genuineness of the documents possessed by aforesaid Shri Satish Chandra. The Education Department after

holding an inquiry ultimately found that the documents possessed by Shri Satish Chandra making him eligible to be appointed as Physical Training Instructor Gr.III are not genuine. Accordingly he was removed from services.

The petitioner after removal of Shri Satish Chandra from services made a request to the respondents to appoint him as Physical Training Instructor Gr.III in place of Shri Satish Chandra. The request made by the petitioner was denied by District Education officer (Secondary) Sriganganagar under an order dated 24.10.2003 on the count that select list on basis of which appointment was given to Shri Satish Chandra stood expired on 31.3.1998. Hence this writ petition is preferred by the petitioner.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the select list prepared in pursuant to the advertisement dated 23.5.1997 stood expired on 31.3.1998, therefore, appointment could not be given to the petitioner.

Heard counsel for the parties.

The contention of counsel for the petitioner is that Shri Satish Chandra procured appointment by placing forged documents before the respondents and this fact was communicated by him to the respondents

immediately after issuance of order of appointment. Not only this he being aggrieved by appointment to Shri Satish Chandra also preferred a writ petition before this Court in the month of May, 1998. The respondents also ultimately found that the documents placed before them by Shri Satish Chandra were not genuine and he was not eligible to be appointed as Physical Training Instructor Gr.III. Therefore, the appointment of Shri Satish Chandra was erroneous from very first day and he occupied a post for which the petitioner was entitled to hold. The complaint was made by the petitioner within the currency of select list with regard to non-eligibility of Shri Satish Chandra. In view of it the position as existing on the day petitioner submitted a complaint is required to be taken into consideration and appointment is required to be accorded to him as Physical Training Instructor Gr.III.

Per contra, it is stated by counsel for the respondents that rightly or wrongly an appointment was made on the post of Physical Training Instructor Gr.III and that appointment remained in currency till the date of removal of Shri Satish Chandra. No vacancy was available upto 31.3.1998 the day on which the select list expired, therefore, the claim made by the petitioner for appointment as Physical Training Instructor Gr.III is misconceived.

I have given my thoughtful consideration to the rival contentions.

It is the position admitted that the respondents made appointments of 15 persons from the select list containing the name of 16 persons and appointment was given to Shri Satish Chandra. In the said select list name of the petitioner was at Sr.No.16. The petitioner immediately after appointment of Shri Satish Chandra made a complaint to the competent authority with regard to forgery made by Shri Satish Chandra. Not only this he filed a writ petition before this Court giving challenge to appointment of Shri Satish Chandra in the month of May, 1998 itself. This fact makes it crystal clear that the petitioner was approaching the respondents to examine genuineness of the documents produced before them by Shri Satish Chandra from beginning. The documents produced by Shri Satish Chandra were ultimately found forged and he was removed from service. In the event the respondents would have acted expeditiously or would have examined the genuineness of the documents before giving appointment to Shri Satish Chandra, his candidature would have been rejected at quite an earlier stage and the petitioner would have been given appointment against the vacancy occupied by Shri Satish Chandra under the order dated 23.3.1998. The petitioner was duly selected by a competent selection committee and appointment was not

accorded to him at first instance only for the reason that the respondents treated Shri Satish Chandra a person eligible to be appointed as Physical Training Instructor though he was not and, therefore, the post was occupied by a person who was not eligible to hold the same.

Once it is found by the respondents themselves that the appointment to Shri Satish Chandra was given erroneously as he was not possessing qualification requisite then the requirement is that the post left by him should have been offered to the petitioner as the petitioner was making complaint with regard to appointment of Shri Satish Chandra from the very first day of his appointment. The denial of appointment to the petitioner who is a duly selected candidate on the count that the select list concerned stood expired is not fair in present set of circumstances. The select list is required to be treated in currency for the reason that an appointment given on basis of select list in question was in dispute on the count of the conditions pertaining to eligibility and it was the petitioner himself who made such complaint.

In view of discussion made above this writ petition deserves acceptance. Accordingly the same is allowed. The respondents are directed to give appointment to the petitioner as Physical Training

Instructor Gr.III w.e.f. 23.3.1998 with all consequential benefits on notional basis.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.